

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RALPH NOLAN	:
	:
Plaintiff,	: <u>ORDER</u>
	:
-v.-	:
	: 23 Civ. 3147 (JHR) (GWG)
CITY OF NEW YORK et al.,	:
	:
Defendants.	:
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GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE


In lieu of responding to the motion to dismiss, plaintiff has filed a motion to amend the complaint (Docket ## 43, 45). While Fed. R. Civ. P. 15(a)(2) provides that leave to amend should be granted “freely,” leave to amend may be denied where there has been “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . . [or] futility of amendment.” Foman v. Davis, 371 U.S. 178, 182 (1962). However, consideration of the “futility” of a proposed amendment to a pleading is addressed to a court’s “discretion.” Grace v. Rosenstock, 228 F.3d 40, 53 (2d Cir. 2000). In this case, the Court believes it would be more efficient to address any claim of “futility” as part of a motion to dismiss following the filing of the proposed amended complaint.

Accordingly, on or before February 11, 2025, the defendants are directed to file a letter or memorandum of law stating any opposition they have to the filing of the proposed amended complaint on grounds other than “futility.” If defendants oppose the amendment, plaintiff may file any reply on or before February 18, 2025.

If the Court grants leave to file the amended complaint, the defendants may file a motion to dismiss that amended complaint in lieu of an answer if they so choose. Any motion to dismiss will be returnable before Judge Rearden and must comply with her Individual Practices.

Dated: January 28, 2025

New York, New York



 GABRIEL W. GORENSTEIN
 United States Magistrate Judge